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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/888,410	06/26/2001	Boyd R. Eifling	N1416-001	9483

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EXAMINER
STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
3761	6

DATE MAILED: 04/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/888,410	EIFLING ET AL.	
	Examiner	Art Unit	
	Jacqueline F Stephens	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *27 February 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-89* is/are pending in the application.

4a) Of the above claim(s) *2-4,6-9,12-19,24,29,32-34,36-39,42-48,57,65-88* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,5,11,20-22,25-28,30,31,35,41,49-51,53-56,58-62, 64 and 89* is/are rejected.

7)☐ Claim(s) *10, 23, 40, 52, 63* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *2* .
4) ☒ Interview Summary (PTO-413) Paper No(s). *5* .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other:

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 1, 5, 10, 11, 20-23, 25-28, 30, 31, 35, 40, 41, 49-52, 53-56, 58-64, and 89 in Paper No. 4, filed 2/27/03 is acknowledged. The traversal is on the ground(s) that the election requirement should have required a species election for the three components comprising the absorbent article – a fibrous cellulose, a particulate cellulose, and a binding agent. This is not found persuasive because each of these elements is a separate component of the absorbent article performing distinct functions and is not a variant of the other. In order to have all species examined, the applicant must admit on the record that all species claimed are considered not patentably distinct. The applicant has not done so, therefore, the requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 30 and 58 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 30 recites the limitation "screening said fibrous cellulose component before mixing with said fibrous cellulose component". It is unclear which components are being mixed as the fibrous cellulose component is not mixed with itself. Applicant may have just intended to claim mixing the fibrous cellulose

component with the particulate cellulose component. The examiner interprets the claim to mean the fibrous cellulose component is screened before mixing with the particulate cellulose component. Correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 5, 11, 20-22, 25, 28, and 30, as best understood by the examiner, are rejected under 35 U.S.C. 102(b) as being anticipated by Loeb USPN 5152250.

As to claims 1 and 25 Loeb discloses an absorbent **11** and method of making an absorbent comprising:

mixing a fibrous cellulose component (col. 3, lines 55-57 – peanut shells) with a a particulate cellulose component (grain flour); and

adding a binding agent (mineral oil col. 2, lines 28-31);

wherein the fibrous cellulose component and the particulate cellulose component are intermixed and the binding agent binds the fibrous cellulose component and the particulate cellulose component (col. 2, lines 25-31 and lines 66-68).

As to claim 5, Loeb discloses the fibrous cellulose component is peanut shells, which is a fibrous waste material.

As to claims 11 and 28, Loeb discloses the binding agent is a mineral oil, which is old and well known in the art to be a lightweight oil (col. 3, line 1).

As to claims 20-22, Loeb discloses the absorbent comprises about 6 to 12% by weight of the particulate component and about 0.5% of the mineral oil (col. 4, lines19-29 and 40-44). Therefore, the remainder of the absorbent, about 87.5-93.5% comprises the fibrous cellulose component.

As to claim 30, Loeb discloses the fibrous cellulose component is screened before mixing with the particulate cellulose component (col. 3, lines 21-28).

6. Claims 1, 20, 21, 25, 26, 31, 35, 49, 50, 53-54, and 58, as best understood by the examiner, are rejected under 35 U.S.C. 102(b) as being anticipated by Stapley USPN 4355593.

As to claims 1, 25, 31, and 53, Stapley discloses an absorbent and method of making an absorbent comprising:

mixing a fibrous wood component ('593 col. 2, lines 46-5), with a

a particulate cellulose component ('593 col. 2, lines 38-50); and

adding a binding agent ('593 col. 3, lines 3-4);

wherein the fibrous cellulose component and the particulate cellulose component are intermixed and the binding agent, which is capable of binding the fibrous cellulose component and the particulate cellulose component.

As to claims 20, 21, 49, and 50, Stapley discloses the absorbent comprises up to 99% by weight of the absorbent component and about .005-10% of the particulate component (col. 1, lines 43-54).

As to claims 26 and 54, Stapley discloses a fibrous component from the claimed materials (col. 2, lines 50-57).

As to claim 35, Stapley discloses the fibrous component may be corncob, peanut hulls and other fibrous waste material (col. 2, lines 46-55).

As to claim 58, Stapley discloses it is preferable that the particulate material be of a size to pass through a Tyler No. 14 screen ('593, col. 2, lines 42-50). Stapley discloses the resultant materials (the examiner interprets this to mean after screening) are combined with an absorbent material. Stapley further discloses the particulate material and absorbent material are of approximate size. Therefore, it is reasonable to assume the absorbent material has also been screened prior to combining with the particulate material.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

9. Claim 27 and 59-62, 64, and 89 are rejected under 35 U.S.C. 103(a) as being unpatentable over Loeb in view of Marcus et al. USPN 5254337.

As to claims 27, 59, 64, and 89, Loeb discloses the present invention substantially as claimed except that Loeb discloses grain flour as the particulate component instead of wood flour. Marcus shows that grain flour is an equivalent structure known in the art (col. 2, lines 34-43). Therefore, because these two were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute wood flour for grain flour. For the limitations regarding the fibrous cellulose component and binding agent, refer to the 102(b) rejection of claim 1 as being anticipated by Loeb.

As to claims 60-62, Loeb/Marcus discloses the absorbent comprises about 6 to 12% by weight of the particulate component and about 0.5% of the mineral oil ('250 col. 4, lines19-29 and 40-44). Therefore, the remainder of the absorbent, about 87.5-93.5% comprises the fibrous cellulose component.

10. Claims 41, 51, and 56 are rejected under 35 U.S.C. 103(a) as being unpatentable over Stapley USPN 4355593 in view of Loeb USPN 5152250. Stapley discloses the present invention substantially as claimed. Stapley discloses the absorbent has a binding agent, but does not specifically disclose the type of binding agent. Loeb discloses a mineral oil, a lightweight oil binding agent for the purpose of providing a biodegradable adhering agent to bind the fibrous and particulate components ('250 col. 2, line 66 through col. 3, line 3). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use mineral oil as a binder in the invention of Stapley for the benefit disclosed in Loeb. Stapley/Loeb discloses the absorbent comprises about 0.5% of the mineral oil ('250 col. 4, lines19-29 and 40-44).

11. Claim 55 is rejected under 35 U.S.C. 103(a) as being unpatentable over Stapley USPN 4355593 in view of Cowan et al. USPN 5207830. Stapley discloses the present invention substantially as claimed except that Stapley discloses ground sagebrush as the particulate component instead of the claimed materials. Cowan discloses that sagebrush is an equivalent structure known in the art (col. 1, lines 38-45). Therefore, because these two were art-recognized equivalents at the time the invention was made, one of ordinary skill in the art would have found it obvious to substitute sawdust for sagebrush.

Allowable Subject Matter

12. Claims 10, 23, 40, 52, and 63 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens
Examiner
Art Unit 3761

April 1, 2003

WEILUN LO
SUPERVISORY PATENT EXAMINER
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